

FILED

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

2014 JAN 23 A 10:34

YAGOOZON, INC.

Plaintiff,

v.

KIDS FLY SAFE and
SCS DIRECT, INC.

Defendants

U.S. DISTRICT COURT
DISTRICT OF RHODE ISLAND

C.A. No.

CA 14 - 40 ML

COMPLAINT

Plaintiff Yagoozon, Inc. brings this action against Defendants, Kids Fly Safe and SCS Direct, Inc., for violation of the Sherman Act, seeking entry of judgment in their favor, compensatory damages, treble damages, interest, and attorneys' fees and costs.

PARTIES

1. Plaintiff Yagoozon, Inc. is a Rhode Island corporation with a principal place of business in Warwick, Rhode Island.
2. Defendant Kids Fly Safe is an Arizona corporation with a principal place of business in Phoenix, Arizona.
3. Defendant SCS Direct, Inc. ("SCS") is Connecticut corporation with a principal place of business in Milford, Connecticut.

JURISDICTION AND VENUE

4. This Court has federal question jurisdiction pursuant to 28 U.S.C. § 1331 under the Sherman Act, 15 U.S.C. § 1.
5. Defendants are properly subject to personal jurisdiction.
6. Venue is proper in this Court pursuant to 28 U.S.C. § 1391.

FACTS

7. Yagoozon markets children's toys, novelty items, party goods and other children's items on the internet.

8. Yagoozon's primary audience is children and young families throughout the United States.

9. Yagoozon successfully and competitively markets products using Amazon.com ("Amazon") as a platform to make sales.

10. With approximately \$18.6 million in sales in 2012, Yagoozon was named the fastest growing retail company in the United States by Inc. Magazine.

11. Amazon is the world's largest electronic marketplace, accounting for nearly 10% of online sales.

12. Amazon divides items into categories and lists them in order of popularity. This is called Amazon Best Sellers Rank ("Sales Rank"). The lower the number, the faster an item sells. Frequently when Yagoozon begins to sell a new item, the Sales Rank drops significantly. For example, in October 2013, Yagoozon purchased a supply of items known as bald caps. Bald caps previously had a Sales Rank around 5,000 in Amazon's Beauty Category. Within two days of Yagoozon selling bald caps, the Sales Rank dropped to a top 100 item.

13. Upon information and belief, Defendant Kids Fly Safe is the patent owner and wholesaler of the CARES Child Aviation Restraint System ("CARES").

14. CARES is a belt and buckle airplane safety harness for children aged 1 and older who weigh between 22 and 44 pounds. It is the world's first airplane passenger restraint system for children.

15. CARES is manufactured exclusively by AmSafe, Inc. ("AmSafe"), the world leader in aviation restraint technology. AmSafe manufactures most of the airplane seatbelts found in commercial aircraft throughout the world.

16. Upon information and belief, Kids Fly Safe is a subsidiary of AmSafe.

17. In 2006, the Federal Aviation Administration ("FAA") determined that CARES provided an equivalent level of safety to a car seat for children traveling in planes.

18. In September, 2006 CARES became the first and only harness type Aviation Child Safety Device to be certified by the FAA as an alternative to a car seat in planes. Thus, parents may check clunky car seats, ordinarily used for children on aircraft, and utilize the lightweight CARES harness.

19. Because CARES is the only FAA certified child safety airplane harness, registered airlines cannot prevent parents from using CARES for their children in lieu of car seats, unlike other child airplane harnesses.

20. Like Yagoozon, Defendant SCS markets and sells children's toys, novelty items, party goods and other children's items on the internet.

21. SCS sells product on Amazon under the seller name ToysNGamesEtc.

22. SCS d/b/a ToysNGamesEtc is a direct competitor of Yagoozon.

23. Upon information and belief, Yagoozon is the biggest competitor of ToysNGamesEtc on Amazon.

24. On November 11, 2013, Yagoozon contacted the product manager for Kids Fly Safe and asked to place a \$30,000 order for CARES. In this correspondence, Yagoozon made no mention of the fact that it makes sales through Amazon.

25. The product manager for Kids Fly Safe responded to Yagoozon the next day and stated that Kids Fly Safe currently has an exclusive distribution contract with another Amazon vendor and was unable to accept any orders from other Amazon sellers.

26. Upon information and belief, the Kids Fly Safe product manager was referring to an agreement with SCS d/b/a ToysNGamesEtc.

27. Yagoozon wrote again to the product manager, explaining that Yagoozon has a brick and mortar storefront in Florida that it could use to sell CARES. Yagoozon did not hear back from the product manager after this correspondence.

28. Contrary to the product manager's statements that Kids Fly Safe has an exclusive distribution contract with SCS d/b/a ToysNGamesEtc, Yagoozon believes that approximately twenty other vendors sell CARES through Amazon.

29. Upon information and belief, the twenty other vendors that sell CARES through Amazon purchase CARES product either directly from Kids Fly Safe or from SCS d/b/a ToysNGamesEtc.

30. The relevant market is the online market for FAA certified aviation child safety harnesses (the "Market").

31. Upon information and belief, Kids Fly Safe conspired with SCS d/b/a ToysNGamesEtc to oust Yagoozon from the Market by agreeing that Kids Fly Safe would not sell to Yagoozon specifically.

32. Because Kids Fly Safe is the patent owner and wholesaler of CARES, Kids Fly Safe has market power to affect the Market.

33. As Amazon sales account for nearly 10% of all online sales, and as Yagoozon is one of Amazon's largest retailers of children's items, the conspiracy between Kids Fly Safe and

SCS d/b/a ToysNGamesEtc has a significant harmful effect on the Market and has caused a reduction in competition in the Market.

COUNT I
(Violation of the Sherman Act, 15 U.S.C. § 1)

34. Plaintiff repeats and incorporates herein by reference the allegations of paragraphs 1 through 33 of this complaint.

35. Section 1 of the Sherman Act states that “[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal . . .”

36. Kids Fly Safe and SCS entered into an agreement designed to suppress competition between SCS and Yagoozon.

37. The agreement between Kids Fly Safe and SCS is unlawful under Section 1 of the Sherman Act because it has an anticompetitive effect on the relevant market for FAA certified aviation child safety harnesses.

38. The agreement between Kids Fly Safe and SCS has no legitimate pro-competitive justification, as its sole purpose is to eliminate Yagoozon from the relevant market, thereby reducing competition for CARES product.

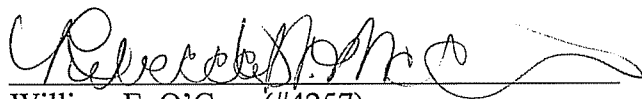
WHEREFORE, Plaintiff demands that judgment enter in its favor and that it be awarded compensatory damages, treble damages, interest, and attorney’s fees and costs.

JURY TRIAL

Plaintiff demands a trial by jury.

YAGOOZON, INC.

By its Attorneys,

A handwritten signature in black ink, appearing to read "William E. O'Gara", is written over a horizontal line.

William E. O'Gara (#4257)

Rebecca M. McCormick (#8459)

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Dated: January 21, 2014